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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,244	07/24/2003	Neil S. Eastman	7042-21	9995

7590 03/19/2010

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/19/2010

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/626,244
Filing Date: July 24, 2003
Appellant(s): EASTMAN ET AL.

Pablo Meles
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/25/08 appealing from the Office action mailed 12/13/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

US 2007/0118833	Hilt	05-2007
US 2004/0049389	Marko	05-2007
US 6,553,077	Rindsberg	04-2003
US 2004/0196179	Turnbull	10-2004
US 7,194,687	Sezan	03-2007

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-5,8-12, 20-22,26 are rejected under 35 U.S.C. 103(a) as being unpatentable by Hilt [US 2007/0118833] in view of Marko [US 2004/0049389] and further in view of Rindsberg [US 6,553,077].

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Regarding claim 1,20,26 Hilt discloses an XM radio system. Hilt further discloses a method comprising:

- a computer(104 in Fig.1) coupled to a display; see Fig.1

However, Hilt does not specifically disclose the use of a single receiver to receive the plurality of broadcast channels and a graphic user interface that selectively displays at least a portion of the data associated with the plurality of channels and wherein the data associated with the plurality of channels includes plurality of channel numbers, a plurality of song titles, a plurality of channel names, and wherein such data is simultaneously updated and displayed.

Marko, in the same field of endeavor, teaches the use of a single radio receiver with a graphical user interface capable of receiving a plurality of broadcast channels and data associated with the plurality of channels, wherein the data associated with the plurality of channels includes plurality of channel numbers, a plurality of song titles, a plurality of channel names See paragraphs 26-28 Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Marko to Hilt in order to provide the user with a more improved and simple to use device compared to the terrestrial system

Hilt and Marko, however, fails to disclose a method wherein the graphic user interface selectively displays at least a portion of the data associated with the plurality of channels and wherein the data associated with the plurality of channels is simultaneously updated and displayed.

Rindsberg, in the same field of endeavor, teaches a method and apparatus for customized selection of audio channels. Rindsberg further teaches a method wherein the graphic user interface selectively displays at least a portion of the data associated with the plurality of

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channels and wherein the data associated with the plurality of channels is simultaneously updated and displayed. See fig. 6, col. 3, lines 41-48, col. 4, lines 1-10 and lines 49-61.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Rindsberg to modified Hilt in order to enable the selection of channels containing the most updated desired content.

Regarding claim 2, Hilt in paragraphs 6 and 19 further discloses a system wherein the user is listening to received audio information which reads on the limitation of volume control, and an output port on the radio receiver, wherein the output port can selectively stream data or audio or video from a selected channel among the plurality of channels. See paragraphs 19 and 23 where the bookmarked information is streamed in to the XM receiver and this reads on the claimed limitation.

Regarding claim 3,²¹ Rindsberg teaches a method wherein the graphic user interface further comprises a program to selectively tag a desired type of content among the plurality of channels, analyze the data associated with the plurality of channels for an indication of content of the desired type among the plurality of channels, and alert a user of a desired channel containing the indication. See Fig. 8 and col. 5, lines 29-50.

Regarding claim 4,²² Rindsberg further discloses a method wherein the user is alerted by a pop-up window of the desired content on the desired channel. See col. 4, lines 33-48.

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Regarding claim 5, Rindsberg teaches a method wherein updates for the data associated with the plurality of channels recur in rapid succession. See col. 5, lines 17-20 and col. 6, lines 27-38.

Regarding claim 8, Marko discloses a method wherein the data associated with the plurality of channels is extracted from a broadcast information channel received at the radio receiver as one of the plurality of channels. See paragraph 26-28

Regarding claim 9, Marko further teaches a method wherein the receiver has plurality of tuners and the data associated with the plurality of channels is extracted from a plurality of tuners performing background scanning among the plurality of channels to create a broadcast information channel. See paragraph 28

Regarding claim 10, Hilt discloses a method wherein the radio receiver is selected among a satellite digital audio receiver, a multi-channel digital FM receiver, and a multi-channel digital AM receiver. See paragraphs 17 and Fig. 1

Regarding claim 11, Hilt discloses a method wherein the system further comprises a global network connection. See Fig. 1

Regarding claim 12, Hilt further discloses a method where the computer controls the radio receiver. See Fig. 1 where the computer is in bi-directional communication with the XM receiver thus indicating that the computer controls the radio receiver and vice-versa.

2. Claims 6,24 is rejected under 35 U.S.C. 103(a) as being unpatentable by Hilt [US 2007/0118833] and Marko [US 2004/0049389] in view of Rindsberg [US 6,553,077] and further in view of Sezan [US 7,194,687].

Regarding claims 6,24 Hilt as treated in claims 1 and 20 respectively further discloses a method wherein the graphical user interface enables the simultaneous viewing of a plurality of channel numbers, a plurality of artist names, a plurality of song titles, a plurality of channel names, a plurality of categories,. See Figs. 26 and 27 and paragraph 232.

However, Hilt fails to disclose a method of viewing a plurality of use percentages.

Sezan, in the same field of endeavor, teaches a method of presenting a usage history that is proportional to a measured percentage consumed by a user of that particular program.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Sezan to modified Hilt in order to provide information of the most popular program viewed by the user.

3. Claim 7, is rejected under 35 U.S.C. 103(a) as being unpatentable by Hilt [US 2007/0118833] and Marko [US 2004/0049389] in view of Rindsberg [US 6,553,077] and further in view of Turnbull [US 2004/0196179].

Regarding claim 7, Hilt as treated in claim 1 discloses all the limitations as claimed. However, he does not disclose a method wherein the graphical user interface enables the viewing of signal strength of a signal received from at least one among a satellite signal and a terrestrial signal.

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Turnbull, in the same field of endeavor, teaches a method wherein the graphical user interface enables the viewing of signal strength of a signal received from at least one among a satellite signal and a terrestrial signal. See paragraph 87.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Turnbull to modified Hilt in order to let the user know if the desired satellite services are available in the particular geographical area.

4. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable by Hilt [US 2007/0118833] in view of Marko [US 2004/0049389]

Regarding claim 13 Hilt discloses an XM radio system. Hilt further discloses a method comprising:

- a computer(104 in Fig.1) coupled to a display; see Fig.1

However, Hilt does not specifically disclose the use of a single receiver to receive the plurality of broadcast channels and a graphic user interface that selectively displays at least a portion of the data associated with the plurality of channels and wherein the data associated with the plurality of channels includes plurality of channel numbers, a plurality of song titles, a plurality of channel names, and wherein such data is simultaneously updated and displayed.

Marko, in the same field of endeavor, teaches the use of a single radio receiver with a graphical user interface capable of receiving a plurality of broadcast channels and data associated with the plurality of channels, wherein the data associated with the plurality of channels includes plurality of channel numbers, a plurality of song titles, a plurality of channel names See paragraphs 26-28

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Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Marko to Hilt in order to provide the user with a more improved and simple to use device compared to the terrestrial system

Regarding claim 14, Marko discloses a method wherein the data associated with the plurality of channels is extracted from a broadcast information channel received at the radio receiver as one of the plurality of channels. See paragraph 26-28

Regarding claim 15, Marko disclose a method wherein the data associated with the plurality of channels is extracted from a plurality of tuners performing background scanning among the plurality of channels to create a broadcast information channel and the output signal representative of the selected channel is an audio output. See paragraphs 26-28

5. Claims 16,18,23,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marko [US 2004/0049389] in view of Rindsberg [US 6,553,077].

Regarding claims 16,25 Marko discloses a single radio receiver and a method of:

- extracting data associated with each channel in the plurality of channels; see paragraph 25
- enabling selective display of the data associated with each of the plurality of channels on a graphical user display; see paragraph 25

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- selectively controlling a remotely coupled channel decoder on a on a radio receiver via the graphical user interface, where the user command specifying the channel to listen is sent from the graphical user interface to control the tuner/decoder. See paragraphs 25-28

Marko, however, fails to disclose a method wherein the graphic user interface selectively displays at least a portion of the data associated with the plurality of channels and wherein the data associated with the plurality of channels is simultaneously updated.

Rindsberg, in the same field of endeavor, teaches a method and apparatus for customized selection of audio channels. Rindsberg further teaches a method wherein the graphic user interface selectively displays at least a portion of the data associated with the plurality of channels and wherein the data associated with the plurality of channels is simultaneously updated. See fig. 6, col. 3, lines 41-48, col. 4, lines 1-10 and lines 49-61.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Rindsberg to Marko in order to enable the selection of channels containing the most updated desired content.

Regarding claim 18, Rindsberg further discloses a method wherein the graphical user interface includes a plurality of selectable tabs to enable the viewing of a plurality of channels belonging to predetermined categories selected from the group of categories including all, music, news, talk, last 10, favorites, traffic, weather, video, rock, classical, jazz, kids, comedy, and user customizable. See paragraph col. 4, lines 15-48 and col. 5, lines 20-50

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Regarding claim 23, Rindsberg further teaches a method wherein the step of tagging further comprises the step of storing descriptors representative of the content on the selected channel in a memory. See col. 5, lines 6-10.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marko [US 2004/0049389] in view of Rindsberg [US 6,553,077] and further in view of Sezan [US 7,194,687].

Regarding claim 17, Marko as treated in claim 16 further discloses a method wherein the graphical user interface enables the simultaneous viewing of a plurality of channel numbers, a plurality of artist names, a plurality of song titles, a plurality of channel names, a plurality of categories.

However, he fails to disclose a method of viewing a plurality of use percentages.

Sezan, in the same field of endeavor, teaches a method of presenting a usage history that is proportional to a measured percentage consumed by a user of that particular program.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Sezan to modified Marko in order to provide information of the most popular program viewed by the user.

7. Claim 19 is rejected under 35 U.S.C. 102(e) as being unpatentable by Marko [US 2004/0049389] and Rindsberg [US 6,553,077] in view of Turnbull [US 2004/0196179].

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Regarding claim 19, Marko as treated in claim 16 discloses all the limitations as claimed. However, he does not disclose a method wherein the graphical user interface enables the viewing of signal strength of a signal received from at least one among a satellite signal and a terrestrial signal.

Turnbull, in the same field of endeavor, teaches a method wherein the graphical user interface enables the viewing of signal strength of a signal received from at least one among a satellite signal and a terrestrial signal. See paragraph 87.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teaching of Turnbull to modified Marko in order to let the user know if the desired satellite services are available in the particular geographical area.

(10) Response to Argument

1. Claims 1-5,8-12, 20-22,26 are rejected under 35 U.S.C. 103(a) as being unpatentable by Hilt [US 2007/0118833] in view of Marko [US 2004/0049389] and further in view of Rindsberg [US 6,553,077].

Appellant argues that the Hilt reference does not teach or suggest a computer coupled to a display having a GUI where data associated with a plurality of channels including channel numbers, artist names, song titles, and channel names are simultaneously updated and displayed on the GUI of the display of the computer. Hilt does not discuss a GUI that updates and presents this particular data.

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Further the appellant argues that Marko does discuss channel numbers, artist names and other related data, but in the context of a text-to-speech device. Further the appellant agrees that Marko discusses the existence of such data being received by the XM radio or Satellite Digital Audio Radio, but fails to teach or suggest that such data is coupled to a computer having a display and a GUI where the GUI simultaneously updates and displays the channels and the associated data.

The appellant further argues that the Rindsberg reference is generally directed to a "favorites" feature for selection of music in a satellite radio system for example and although Rindsberg discusses a channel reference table, this table is not updated and displayed on a GUI as claimed.

In response to the appellant's argument, the examiner respectfully disagrees.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The examiner would like to point out the disclosure in the references individually first.

1. Hilt reference discloses a method of coupling a computer(104 in Fig.1) coupled to a display; see Fig.1. Further in paragraph 20, Hilt discloses the XM radio receiver to include a browser which reads on the limitation of GUI interface.
2. Marko reference teaches a method of receiving a plurality of channels using a single audio receiver. See paragraphs 26-28. Further Marko discloses that the data received from the plurality of channels include artist name, song, title, channel ID as indicated in paragraph 28.

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3. Rindsberg reference teaches a method of receiving a plurality of channels containing content such as song title, album name, artist, title, genre etc as indicated in col. 4, lines 16-61. Rindsberg further teaches a method where this information is routed to a display (see col. 4, lines 30-32). Rindsberg further discloses a method where this information received by the plurality of channels is updated simultaneously. In Fig. 6 is shown a table that contains all the information received from a plurality of channels for example channel 1, channel 2 etc. And further in col. 4, lines 49-61, he teaches a method where this table is updated and therefore the information from all the received channels is updated simultaneously.

As seen from the above discussions of the three references, it is clear that the references are in analogous art i.e. in the method of receiving broadcast information in an audio receiver (example handheld device) from satellite radio operators and hence are combinable to meet the claim limitations.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Marko to Hilt in order to provide the user with a more improved and simple to use device compared to the terrestrial system

Further it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Rindsberg to Hilt modified by Marko in order to enable the selection of channels containing the most updated desired content.

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2. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable by Hilt [US 2007/0118833] and Marko [US 2004/0049389] in view of Rindsberg [US 6,553,077] and further in view of Sezan [US 7,194,687].

In response to the appellant's argument, the examiner respectfully disagrees.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The examiner would like to point that the reference Sezan teaches an audiovisual information management system and therefore in the same analogous art as Hilt, Marko and Rindsberg. Further Sezan teaches a method of presenting a usage history that is proportional to a measured percentage consumed by a user of that particular program.

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the above teachings of Sezan to modified Hilt in order to provide information of the most popular program viewed by the user.

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3. Rejection of claims 7,13-15,16-18,23,25

See discussions regarding rejection of claims 1-5,8-12, 20-22,26.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Sujatha Sharma/
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3/4/10

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